STAFF SUMMARY FOR OCTOBER 14, 2021

26. PETITIONS FOR REGULATION CHANGE

Today's Item **Information ☐** **Action ☒**

This is a standing agenda item for FGC to act on regulation petitions received from the public at previous meetings. For this meeting:

(A) Action on petitions received at the Aug 2021 meeting

(B) Pending regulation petitions referred to staff or DFW for review

Summary of Previous/Future Actions

(A)

- FGC received petitions — Aug 18, 2021; Webinar/Teleconference
- **Today's action on petitions** — **Oct 14, 2021; Webinar/Teleconference**

(B)

- FGC received petition 2020-015 — Dec 9-10, 2020; Webinar/Teleconference
- Petition 2020-015 referred to DFW — Feb 10, 2021; Webinar/Teleconference
- FGC received petition 2021-001 — Apr 14, 2021; Webinar/Teleconference
- Petition 2021-001 referred to DFW and FGC staff — Jun 16-17, 2021; Webinar/Teleconference
- **Today's action on petitions** — **Oct 14, 2021; Webinar/Teleconference**

Background

Regulation change petitions received at an FGC meeting are scheduled for consideration at the next regularly-scheduled business meeting under (A), unless the petition is rejected under 10-day staff review as prescribed in Title 14, subsection 662(b).

A petition may be (1) denied, (2) granted, or (3) referred to a committee, staff, or DFW for further evaluation or information-gathering. Referred petitions are scheduled for action under (B) once the evaluation is completed and a recommendation made.

(A) ***Petitions for regulation change.*** One petition received at the Aug 2021 meeting is scheduled for action.

I. *Petition 2021-013:* Request to revise regulations for commercial market squid fishing in Monterey Bay, including changes to allowed days, times, and lighting

The staff recommendation and rationale, developed with input from DFW staff, is provided in Exhibit A1.

(B) ***Pending regulation petitions.*** This is an opportunity for staff to provide recommendations on petitions previously referred to staff, DFW, or a committee for review. Two referred petitions are scheduled for action today (Exhibit B1).

I. *Petition 2020-015:* Request to amend Pacific herring regulations to exempt lampara bait nets from gear restrictions for commercial take (Exhibit B2). Previously referred to DFW.

This petition requests to authorize lampara bait net gear for commercial take of Pacific herring, allowing the applicant to take small quantities of Pacific herring in Humboldt Bay. Currently take is only authorized by gill net. DFW's review and recommendation is provided in Exhibit B3.

DFW Review and Recommendation

In its review, DFW notes the historic phasing out of round haul nets (of which lampara net gear is a subset) in the roe herring fishery and describes how the proposed small scale use of lampara net gear to target whole fish contrasts with historic use. DFW notes that *California Pacific Herring Fishery Management Plan* (FMP) allows changes in gear type through FGC rulemaking to allow for flexibility and market access, on condition of evaluating potential impacts through an experimental fishing permit. DFW has previously conducted collaborative sampling with the petitioner, which enabled DFW to evaluate the potential gear impacts, as intended by the FMP condition. DFW does not anticipate resource concerns related to gear selectivity, reproductive health of the stock, or habitat impacts, nor does it anticipate a high bycatch risk resulting from use of the gear as proposed.

II. *Petition 2021-001:* Request to restore recreational and commercial red abalone harvest at San Miguel Island, Santa Barbara County, based on guidance in Appendix H of *Abalone Recovery and Management Plan* (ARMP) (Exhibit B4). Previously referred to DFW and FGC staff.

This petition requests to open a fishery for red abalone at San Miguel Island to be conducted in accordance with Appendix H of the ARMP, including a three-month season, total allowable catch limit, and biological sampling requirements. Petitioner proposes "habitat resource recovery and mitigation" actions and offers to conduct cooperative research with partner agencies. DFW's review and recommendation is provided in Exhibit B5.

DFW Review and Recommendation

DFW notes that FGC determined in 2012 that red abalone densities at San Miguel Island were insufficient to support a fishery, based on two reports that summarized several years of collaborative evaluation at the island. DFW finds that the current petition does not provide sufficient information to warrant consideration of a red abalone fishery at San Miguel Island at this time.

In its review, DFW highlights that declines in red abalone density have recently been documented at the island by Channel Islands National Park's Kelp Forest Monitoring Program surveys (2018-2019). The surveys document poor environmental conditions with dramatic loss of giant and understory kelp and new areas characterized as urchin barrens.

While DFW concludes that a fishery cannot be supported at this time, it is interested in working with partners to further assess the situation at San Miguel Island to determine if there any effective ways to improve conditions.

FGC Staff Review

At the request of the petitioner, FGC referred the petition to its legal counsel to evaluate reliance on Appendix H of the ARMP for opening the fishery immediately. FGC legal counsel advises that the petition to open a fishery as proposed is a resource management determination, not a legal one.

Additionally, FGC staff reviewed Channel Islands National Park's survey data and analysis (Exhibit B6) relied upon by DFW in its review. FGC staff concurs with DFW's conclusions based on currently available data related to local red abalone density and condition, and kelp forest ecosystem health, and supports DFW working with partners to further asses the situation at San Miguel Island.

Significant Public Comments

Two previous commercial abalone divers support Petition 2021-001 and report their personal underwater observations of abundant abalone at San Miguel Island (exhibits B7 and B8).

Recommendation

FGC staff: (A) Deny Petition 2021-013 for the reasons explained in Exhibit A1.

(B) Staff concurs with DFW evaluations and recommendations to grant Petition 2020-015 in concept, and to deny Petition 2021-001.

DFW: (B) Grant Petition 2020-015 in concept, with details of a proposal to be developed by DFW with petitioner and interested parties, and schedule for a future rulemaking (exhibits B1 and B3). Deny Petition 2021-001 for the reasons described in exhibits B1 and B5.

Exhibits

A1. Table of petitions for regulation change, updated Oct 7, 2021
A2. Petition 2021-013, regarding commercial market squid fishing in Monterey Bay, received Jun 18, 2021
B1. Table of referred petitions for regulation change, updated Oct 7, 2021
B2. Petition 2020-015, regarding use of lampara nets to take Pacific herring, received Nov 3, 2020
B3. DFW memo regarding petition 2020-015, received Sep 21, 2021
B4. Petition 2021-001, to authorize red abalone harvest at San Miguel Island, received Feb 22, 2021
B5. DFW memo regarding petition 2021-001, received Sep 24, 2021
B6. Synopsis of Channel Islands National Park's Kelp Forest Monitoring Sites at San Miguel Island – 2018, 2019, and red abalone density and size frequency data, 1997-2019
B7. Letter from Jeff Baldwin regarding petition 2021-001, received Jul 12, 2021
B8. Letter from Robert McKinley regarding petition 2021-001, received Jul 26, 2021

Motion

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations to deny petitions 2021-013 and 2021-001, and grant petition 2020-015 as reflected in exhibits A1, B1, B3, and B5.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations as reflected in exhibits A1, B1, B3, and B5, except for petition(s) _____ for which the action is _____.

CALIFORNIA FISH AND GAME COMMISSION PETITIONS FOR REGULATION CHANGE - ACTION

FGC - California Fish and Game Commission DFW - California Department of Fish and Wildlife WRC - Wildlife Resources Committee MRC - Marine Resources Committee

Grant: FGC is willing to consider the petitioned action through a process Deny: FGC is not willing to consider the petitioned action Refer: FGC needs more information before the final decision

Tracking No.	Name of Petitioner	Subject of Request	Short Description	FGC Receipt	FGC Initial Action	Initial Staff Recommendation
2021-013	Tom Noto	Commercial fishing: Market squid	Revise regulations for commercial market squid fishing in Monterey Bay, including changes to allowed days, times, and lighting.	8/18/2021	10/14/2021	DENY; the petitioner has not provided documentation to substantiate that a significant biological risk is imminent, or to justify that immediate action is necessary at this time. Recommend that the petitioner work with DFW or an academic partner to consider how to evaluate the observations and concerns. Additionally, DFW is in the early stages of conducting a squid management review process; petitioner is encouraged to work within that process to bring forward the concerns and potential regulation changes.

Tracking Number: (2021-013_)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Tom Noto
Address: [redacted]
Telephone number: ([redacted]
Email address: [redacted]

2) Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested Sections 7078, 7701, 7708, 8026, 8425 and 8429.5, Fish and Game Code:

3) Overview (Required) - Summarize the proposed changes to regulations:

This petition will be to change regulations in Section 149 of Title 14, California Code of Regulations. Return the fishing times in the Monterey Bay region back to the way they were historically: Fishing to be allowed starting Monday morning at 12:00am to 11:59am every day through Friday at noon. Additionally, there shall be no squid commercial fishing from noon Friday through 11:59pm Sunday night. The area for which the proposed additional time restrictions would apply is within a line that starts at Cypress Point and then goes north-east to the Moss Landing Harbor entrance, and all waters therein shoreward. Additionally, no vessel participating in this fishery shall display any lights prior to the opening time other than navigation lights.

4) Rationale (Required) - Describe the problem and the reason for the proposed change.
It is our deep concern that increased in fishing pressure in this area is not allowing enough time for squid to spawn.

As the Commission knows, the sustainability of market squid is addressed using three tools: 1) the California coastwide cap on harvest of 118,000 short tons, 2) a number of state MPA's are in regions of known frequent squid spawning, thereby guaranteeing safe spawning areas, and 3) time closures to allow for spawning, which are the subject of this petition to modify.

Over the past approximately ten years, Districts 16 and part of 17 in or near Monterey Bay have seen an increasingly large fleet of permitted purse sein vessels and light boats fishing squid very hard. These vessels will set on small schools of squid of only a ton or two, and fish in any weather. It is the observation of Monterey's historic squid fishermen, who represent three generations of current, active fishing, that the existing time closure rule (open noon Sunday through noon Friday) does not offer enough time for squid to adequately spawn in these conditions of high-pressure fishing. This conclusion has developed over several years of observations.

In offering this petition to the Commission, we want to be very clear that we are only addressing conditions in the Monterey Bay region; we make no assertion that concerns about inadequate spawning time exists in any other California region.

The area for which the proposed additional time restriction would include is all waters shoreward of a line drawn from Cypress Point north-east to the Moss Landing Harbor entrance.

To equitably regulate the start time, we propose that no vessel participating in this fishery shall display any lights prior to the opening time other than navigation lights.

Monterey's Historic Squid Boat Owners are also aware of the national and state discussions of concepts of regional management. This is in part due to anticipated effects of changing ocean conditions, and also from the body of socioeconomic work that concludes that those who live in communities that have a direct interest in the condition of the natural resources that those communities rely on can/should contribute to the management of those resources.

Last, the time closure proposed by this petition is requested for a five year period, with the expectation that a report will be provided to the Commission with a recommendation to either renew, or end, the additional harvest time restrictions.

SECTION II: Optional Information

5) Date of Petition: 06/18/2021.

6) Category of Proposed Change

☐ Sport Fishing
☐XX Commercial Fishing
☐ Hunting
☐ Other, please specify: Click here to enter text.

7) The proposal is to: (*To determine section number(s), see current year regulation booklet or https://govt.westlaw.com/calregs*)

1. ☐XX Amend Title 14 Section(s) 14 CCR § 149

§ 149. Commercial Taking of Market Squid.

c) Time Closures. North of a westerly extension of the United States - Republic of Mexico boundary line:

(1) Fishing Days: Market squid may not be taken for commercial purposes between 1200 hours (noon) on Friday and 1200 hours (noon) on Sunday of each week, except as provided below: The allowed fishing times in the area seaward of a line drawn from Cypress Point north-east to the Moss Landing Harbor entrance in the Monterey Bay region will start Monday night at 12:00am through 11:59am every day through Friday at noon. No squid commercial fishing in this area from noon Friday through 11:59pm Sunday night. Additionally, no vessel participating in this fishery shall display any lights prior to the opening time other than navigation lights.

☐ Add New Title 14 Section(s): Click here to enter text.
☐ Repeal Title 14 Section(s): Click here to enter text.

Amend this section as shown above.

2. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition Click here to enter text.
Or XX☐ Not applicable.

3. Effective date: If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency:

September 1, 2021 or immeditely

Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Reports from Sunday & Monday fish caught.

4. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Click here to enter text.

5. Forms: If applicable, list any forms to be created, amended or repealed:

N/A

SECTION 3: FGC Staff Only

Date received: 6/18/2021

FGC staff action:
X Accept - complete

☐ Reject - incomplete
☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _6/18/21, 7/14/21_

Meeting date for FGC consideration: ___Oct 13-14, 2021__

FGC action:6/18/21,

☐ Denied by FGC
☐ Denied - same as petition _____

Tracking Number

☐ Granted for consideration of regulation change

CALIFORNIA FISH AND GAME COMMISSION PETITIONS FOR REGULATION CHANGE - ACTION

FGC - California Fish and Game Commission DFW - California Department of Fish and Wildlife WRC - Wildlife Resources Committee MRC - Marine Resources Committee

Grant: FGC is willing to consider the petitioned action through a process Deny: FGC is not willing to consider the petitioned action Refer: FGC needs more information before the final decision

Tracking No.	Name of Petitioner	Subject of Request	Short Description	Marine, Wildlife, or Admin?	FGC Receipt	FGC Initial Action	Initial Staff Recommendation	Referral Date	Referred to	Final Staff Recommendation
2020-015 AM1	Ken Bates	Commercial take of Pacific herring: Lampara bait nets	Amend commercial Pacific herring regulations to clarify that lampara bait nets, as described in Fish and Game Code Section 8780, are exempt from the current prohibition on the use of round haul nets to take herring.	Marine	12/9-10/2020	2/10/2021	REFER to DFW for review and recommendation.	2/10/2021	DFW	GRANT for consideration in a future rulemaking based on DFW evaluation and recommendation; see DFW memo Oct 2021 meeting binder (Exhibit 26B.3).
2021-001	Steve Rebuck	Recreational and commercial red abalone fishery: San Miguel Island	Open a three-month biological fishery for red abalone at San Miguel Island, Santa Barbara County, relying upon Appendix H of the Abalone Recovery and Management Plan. A detailed proposal is offered, including data collection and habitat/resource recovery and mitigation actions.	Marine	4/14/2021	6/16-17/2021	REFER to DFW for review and recommendation and REFER to FGC legal counsel for review of reliance on Appendix H of the Abalone Recovery and Management Plan to reopen the fishery, as proposed.	6/16-17/2021	DFW; and FGC legal counsel	DENY based on DFW review and recommendation. In 2012 red abalone densities at San Miguel Island were determined to be insufficient to support a fishery, and DFW highlights that density declines have recently been documented by the Channel Islands National Park kelp forest monitoring program (2018-2019). Rationale is detailed in DFW review and recommendations memo in Oct 2021 meeting binder (Exhibit 26B.4). FGC legal counsel has determined that reliance on Appendix H of the Abalone Recovery and Management Plan to reopen the fishery, as proposed, is a resource management determination, not a legal one.

Tracking Number: (2020-015 AM1)

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SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
   Name of primary contact person: Ken Bates
   Address:
   Telephone number:
   Email address:

2. **Rulemaking Authority (Required) -** Reference to the statutory or constitutional authority of the Commission to take the action requested: **"**The MLMA requires that fishery management be adaptive. The MLMA defines adaptive management as a policy that seeks to improve management by viewing management actions as tools for learning, even if they fail [90.1]. **The MLMA stipulates that management should: ensure that management is proactive and responds quickly to changing environmental conditions and market or other socio-economic factors and to the concerns of fishery participants [7056(1)]."** This is quoted directly from the Commission's 2018 Master Plan for Fisheries, Implementation of the MLMA. *Staff Note: Petitioner-identified authority of Fish and Game Code Section 8780, under I.3-Overview, satisfies this requirement. (Note was added 11/17/2020)*

3. **Overview (Required) -** Summarize the proposed changes to regulations:
   I am requesting an amendment to Title 14 CCR Sect. 163 (2), Harvest of Herring. Amended as follows: Sect. 163 (2) "the use of round haul nets (**except Lampara bait nets as described in Fish and Game code section 8780)** to take herring is prohibited.

4. **Rationale (Required) -** Describe the problem and the reason for the proposed change:
   I am applying to take limited amounts of Pacific Herring with Lampara Bait Net gear as described in the Fish and Game code. In 2008, Eureka Ice and Cold Storage, located in Eureka closed. Loss of freezing capacity shut down the "herring roe" fishery in both Humboldt and Crescent City permit areas. In 2018/2019, I developed limited markets for fresh Pacific herring. Catching herring for these markets by use of gillnet gear is irresponsible, as there is

no way to control harvest rate with gillnet gear. I can say this with much assurance as I have 24 years experience with small scale Lampara gear and have done two years of volunteer sampling of Humboldt Bay Herring for the Fish and Game Commission and the Department. This is the logical way to take small amounts of fish and avoid wanton waste and discards. All unused fish in the net are released alive (see YouTube- Humboldt Bay Herring Lampara Net).

SECTION II: Optional Information

5. Date of Petition: October 14, 2020

6. Category of Proposed Change

☐ Sport Fishing
☐ Commercial Fishing 0
☐ Hunting
☐ Other, please specify: Click here to enter text.

7. The proposal is to: (*To determine section number(s), see current year regulation booklet or https://govt.westlaw.com/calregs*). **The goal of the proposal is to exercise provision [7056(1)] of the Commissions Marine Life Management Act 2018 Implementation Plan by amending Title 14, Section 163 (2)**

X Amend Title 14 Section(s): 163(2)

☐ Add New Title 14 Section(s): N/A
☐ Repeal Title 14 Section(s): N/A

8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition

Or ☐ Not applicable.

9. Effective date: If applicable, identify the desired effective date of the regulation. **January 2, 2021**

If the proposed change requires immediate implementation, explain the nature of the emergency:

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents:

During the public comment process of the Herring FMP, I repeatedly lobbied Ryan Bartling, Sarah Valencia, Nick Sorhakoff and other team members to include a provision in the FMP to consider “alternative fishing gears” to take herring. Contained in *Appendix A of the Herring FMP is a discussion of the use of “Lampara round haul gear” as a potential alternative gear type to take small amounts of Pacific Herring. *See Pacific Herring FMP; Appendix A.

11. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing:

Increased revenue to Fish and Wildlife through landing and research taxes, economic benefit to the recipients of fresh fish.

12. Forms: If applicable, list any forms to be created, amended or repealed:

Click here to enter text.

SECTION 3: FGC Staff Only

Date received: Click here to enter text.

FGC staff action:

- ☐ Accept - complete
- ☐ Reject - incomplete
- ☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:

- ☐ Denied by FGC
- ☐ Denied - same as petition _____

Tracking Number

- ☐ Granted for consideration of regulation change

State of California
Department of Fish and Wildlife

Memorandum

Date: September 13, 2021

Received 9/21/2021
Original copy on file

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Response to Petition 2020-015 AM1: Use of Bait Nets for Commercial Take of Herring**

Background

At their February 10, 2021, meeting, the California Fish and Game Commission (Commission) referred a petition for regulation change (2020-015 AM1) to the Department of Fish and Wildlife (Department) for its review and recommendation. This petition, submitted by Humboldt Bay Herring permittee Mr. Ken Bates (Applicant), requests to amend Pacific herring regulations to exempt lampara bait nets from gear restrictions, allowing the applicant to take small quantities of Pacific herring in Humboldt Bay.

Current regulations in Title 14, California Code of Regulations, Sections 163, 163.1, 163.5, and 164, which implement the Pacific Herring Fishery Management Plan (Herring FMP) specific to commercial take, divide the herring fishery into two sectors: Herring and Herring Eggs on Kelp (HEOK). Regulations for the Herring sector currently allow take of whole fish for any market purpose by gill net only. The Herring FMP generally considers round haul nets, a gear category that includes lampara-style bait nets, within the context of historical purse seining in San Francisco Bay. This historical sector of the commercial herring fishery took large quantities of fish with low selectivity. Use of this type of gear was phased out in favor of gill nets of specified mesh size to allow selectivity of older fish with low bycatch, promoting the long-term health of the stock.

However, the Herring FMP allows changes in gear type through a Commission rulemaking to allow for future flexibility and market access. In particular, the Herring FMP suggests that future gear changes may be explored through Experimental Fishing Permits. This process allows the Department to evaluate potential impacts of the new gear type, including bycatch, habitat impacts, and reproductive impacts to the stock from gear selectivity. In this case, the applicant assisted Department scientists with sampling using the specific lampara net gear-type being requested. This collaborative sampling enabled the Department to evaluate the potential impacts described in the Herring FMP and has already fulfilled the purpose of seeking an Experimental Fishing Permit.

Because of the small scale at which the Applicant proposes to use the requested lampara-net gear type, Department scientists do not anticipate resource concerns related to gear selectivity and the reproductive health of the stock, or habitat impacts. Due to specifics of how target fish are removed by dip net from the lampara net, while others are released unharmed, the Department does not consider there to be a high risk of bycatch.

Department Recommendation

The Department recommends the Applicant's petition be granted in concept, and that a Commission rulemaking be considered to allow for limited commercial take of Pacific herring by lampara gear. If approved and prioritized, Department scientists would work with the Applicant and other interested parties to develop adequate definitions for such gear, including net dimensions and construction, as well as bounds on use, including spatial and temporal limits governing where and when use of such gear would be allowed.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Marine Regional Manager, Marine Region, at (916) 215-9694.

ec: Garry Kelley, Acting Deputy Director
Wildlife and Fisheries Division
Garry.Kelley@Wildlife.ca.gov

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Tom Greiner, Environmental Scientist
Marine Region
Tom.Greiner@wildife.ca.gov

PETITION TO THE CALIFORNIA FISH AND GAME COMMISSION FOR REGULATION CHANGE

Tracking Number: (2021-001)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Steven L. Rebuck .
Address: [redacted]
Telephone number: [redacted]
Email address: [redacted]

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: **Section 29.15. Abalone 14CCR, S.45, 200, 203, 205, 206, 209, 210, 211, 215, 218, 219, 220, 265, 3990**.

3. Overview (Required) - Summarize the proposed changes to regulations: Restore recreational and commercial harvest of red abalone, Regulations, south of San Francisco to pre-1998 status, San Miguel Island, Santa Barbara County California only.

4. Rationale (Required) - Describe the problem and the reason for the proposed change: See attached Rationale 1

SECTION II: Optional Information

5. Date of Petition: February 22, 2021.

6. Category of Proposed Change

X☐ Sport Fishing
X☐ Commercial Fishing
☐ Hunting
☐ Other, please specify: Click here to enter text.

7. The proposal is to: (*To determine section number(s), see current year regulation booklet or https://govt.westlaw.com/calregs*)

☒ Amend Title 14 Section(s): Section 29.15 .Abalone

☐ Add New Title 14 Section(s): Click here to enter text.

☐ Repeal Title 14 Section(s): Click here to enter text.

8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition C2019-027.

Or ☐ Not applicable.

9. Effective date: If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: July, August, September 2021.

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: See: Rationale, citations.

11. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Creates taxes for California, management/law enforcement funding for DFW, jobs for citizens, income for coastal communities.

12. Forms: If applicable, list any forms to be created, amended or repealed:

Click here to enter text.

SECTION 3: FGC Staff Only

Date received: Click here to enter text.

FGC staff action:

☐ Accept - complete

☐ Reject - incomplete

☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:

☐ Denied by FGC

☐ Denied - same as petition _____

Tracking Number

☐ Granted for consideration of regulation change

Biological Red Abalone Fishery for San Miguel Island
March 2021
By Steven L. Rebuck

These details of a Biological Fishery for red abalone at San Miguel Island (SMI) are in addition, and pursuant to our Petition for Regulatory Change, Submission, February 22, 2021, using Abalone Recovery and Management Plan (ARMP) Appendix H. We propose these details to assist the California Fish and Game Commission (FGC) in consideration of our petition.

1) We propose to use Fish and Game Code Sections on commercial and recreational abalone as they existed prior to the Moratorium, May, 1997.
2) We propose a fishery season of July, August, September,2021 , at San Miguel Island (SMI) only.
3) Only properly permitted commercial or recreational fishermen will be allowed to participate.
4) All red abalone fishing will be conducted pursuant to ARMP Appendix H, and related regulations.
5) Fishermen must contact California Department of Fish and Wildlife (CDFW) before departure.
6) We propose a Biological Fishery where all red abalone catch, commercial (E-Tix/Dock Ticket) and recreational (fixed tag/smart phone) must be reported before fishermen leave SMI. All abalone landed will be presented to CDFW agents at a Santa Barbara location.
7) After examination, CDFW agents will return remaining shell, trim and meat to the fishermen or processor.
8) CDFG will only close these fisheries when:
   A) Total Allowable Catch limit is reached;
   B) September 30, 2021 is reached;
   C) Biological data suggest the fishery should close.
   D) In season adjustments may be considered.

Habitat/Resource Recovery and Mitigation

1) Encourage purple urchin removal. Allow mixed commercial loads of abalone, red urchin and purple sea urchin. This creates a financial incentive for those with both commercial abalone and sea urchin permits to remove excess purple urchins. Currently, there is a limited market only for purple sea urchin. What to do with them remains a problem. Commercial and recreational divers prefer smashing of purple urchins.

2) Fishery will initially target the largest and oldest of the red abalone observed at SMI. However, Appendix H suggests a slot size between 7 ¾" and 8" (p. H-7). It would appear logical to remove larger size animals first, providing increase habitat for abalone recruiting into the fishery. A slot limit will make this difficult.

3) Using underwater GoPro video cameras, commercial divers will video each dive, collecting data on density, size variation, kelp, and other biological factors. Upon delivery of abalone, divers will turn over memory cards to CDFW. Once data is downloaded, memory cards will be returned for reuse.

4) Encourage abalone enhancement through out-planting of juvenile red abalone. The commercial divers in Santa Barbara have out-planting history going back approximately 40 years to the early 1980s. Onboard "Deck Spawning" is another option.

5) Commercial divers will engage in cooperative research projects with: National Park Service (NPS), Channel Islands Marine Sanctuary (CIMS), County of Santa Barbara (CSB), Ocean Protection Council (OPC), Reef Check (RC), and Dept. of Fish and Wildlife (CDFW).

6) Encourage, and assist kelp enhancement projects.

Overview/Rationale: Former Commercial Abalone Diver Support for Abalone Recovery and Management Plan, Appendix H (revised February 18, 2021)

Steven L. Rebuck, Former Commercial Abalone Divers

" A biomass estimate of 3 million emergent abalone indicate a harvestable population of 75,000 to 150,000 red abalone at SMI. An initial total allowable catch (TAC) of 15,000 red abalone is proposed at SMI. Harvesting 10-20% of those abalone falls within the slot size should have a negligible effect on the population as a whole." Abalone Recovery and Management Plan, Appendix H, Page H-9

OVERVIEW

1) The range of red abalone, Haliotis rufescens is Sunset Bay, Oregon to Bahia Tortugas, Baja, Mexico._1/.

2) Red abalone, Haliotis rufescens, are not a State or Federal threatened and/or endangered species.

3) This is not an "Experimental Fishery". We propose to reestablish former abalone fishing regulations used prior to 1998.

4) We propose using Abalone Advisory Group (AAG) Fishery Management Option A: Red Abalone Demonstration Fishery. _2/.

5) The former commercial abalone divers of California support the use of the Abalone Recovery and Management Plan (ARMP) Appendix H (A-H)_3/ as a management vehicle to reopen San Miguel Island, Santa Barbara County, for commercial and recreational red abalone diving.

6) Multiple studies have been produced demonstrating the possibility of reestablishing commercial and recreational fisheries at San Miguel Island. _4/5/6/7/8/…….

HISTORY

Drafting of what became A-H began in August 19, 2005 with the submission of a plan titled: "Components of an Experimental Commercial Red Abalone Fishery", Steven L. Rebuck, to the California Fish and Game Commission (Commission). Commission President Michael Flores requested staff (John Ugoretz) include this submission into the ARMP discussion. By September 2005, the California Abalone

Association (CAA) had created a subcommittee to explore and draft a plan for San Miguel Island. A DRAFT of this plan was submitted to the Commission September the 2005. At this meeting, the Commission directed staff to work with CAA on this project. Originally, this effort was title Alternative 8. Within a couple years, a Technical Panel (TP) was formed and began drafting language for what became A-H. *_6/ followed by a Review Panel_7/. This effort coincided with the appointment of the Abalone Advisory Group (AAG)* .

JUSTIFICATION

A-H, as crafted, and included with the ARMP, offers a Fishery Management Plan (FMP) for SMI. A-H contains the following:

* Suggests use of ARMP required Index Sites, in coordination with California Department of Fish and Wildlife (DFW), Director's Abalone Advisory Committee (DAAC), National Park Service (NPS)/Kelp Forest Monitoring Program (KMP), and California Abalone Association (CAA).

* Identifies Collaberative Abalone Research Program (CARP) and Adams Cove, Castle Rock, and Crooks Point as Index Sites. CAA had previously installed on monitoring site at Tyler Bight, monitored by NPS/KMP.

*Identifies a Total Allowable Catch (TAC) for both commercial and recreational abalone fishing for red abalone only.

* Fisheries Management: Integrates Marine Protected Areas (MPAs) at SMI: Judith Rock, near Pt. Bennett, which includes Adams Cove.

* Use of Position Indicating Transponders (PIT).

* Identifies Landing Taxes and Resource Rents.

*Creates Fishery Dependent and Fishery Independent Data which DFW does not currently have.

* Creates a financial stream for DFW, management and law enforcement, which they currently does not have.

We propose a domestic use fishery only. No export out of the USA.

BIOLOGICAL FISHERY

As proposed by the California Department of Fish and Wildlife (DFW) This group of former commercial abalone divers support this concept.

1) All abalone harvested will be reported to DFW at the time of harvest. Photographs of ones fishing trip, location, time of day, dates, etc. will be reported.
2) Once a fishing trip is completed, the boat crew will contact DFW and report the estimated time of return to port.
3) Crew will meet with DFW biological team and allow them to examine all abalone harvested.
4) Once DFW biological team has examined and/or taken tissue samples, abalone will be returned to boat crew and/or abalone processor.
5) Catch reporting: Title 14, S 197, E-Tix, http://etix.psmfc.org

Excerpted Source: Sonke Mastrup, pers. comm., et al

TERRITORIAL USE RIGHTS for FISHING (TURF)

"TURFs allocate exclusive harvest for one or more marine species in a specific area. TURFs are ideal for species like abalone that will not move beyond TURF boundaries, but they can be designed for more mobile species as well. TURFs may occur independently, or they may be part of a broader system of TURFs. Well designed networks of TURFs can be used to manage more complex fisheries, including those with mobile species or multiple groups of fishermen."

What are TURF Reserves?

"*TURF Reserves are TURFs paired with no-take reserves, which are areas where no fishing is permitted. Theory and practice show that fishermen have greater incentive to implement and enforce TURF Reserves because they directly benefit from the fish that spill over from no-take reserves to their TURF. The fishery management combination is growing in interest, allowing local government to reap the rewards of being responsible stewards of their fisheries."*

Source: Environmental Defense

SUPPORTING LITERATURE

1. Cox, Keith, 1962, California Abalones, Family Haliotidae, Fish Bulletin 118, California Department of Fish and Game.

2. Abalone Advisory Group Report, January 29, 2010, Management Options for Establishing a Potential Red Abalone Fishery at San Miguel Island, For Presentation to the Marine Resources committee of the California fish and Game Commission, February 16, 2010.

3. Appendix H. Proposed Amendments to Alternative 1 in ARMP as Submitted by Commercial Constituents to the Fish and Game Commission, an amendment to the Abalone Recovery and Management Plan, Alternative 1.

4. Taniguchi, Ian, D. Stein, K. Lampson, The San Miguel Island Red Abalone Resource: Results of Survey Conducted from July-October 2007, Marine Invertebrate Management Project, DFG.

5. Jloa, Yan, L. Rogers-Bennett, P. Crone, J. Butler, April 10, 2009, Appendix H.

6. Appendix B: DFG San Miguel Island Red Abalone Surveys (2006, 2007, 2008).

7. Prince, Jerome, California Abalone Marketing Association, February 6, 2012/Revised May 30, 2012, Proposal for Red abalone Research Fishery at San Miguel Island (SMI).

8. Bren School, 2010, Economic Viability and Sustainable Management of a California Red Abalone Fishing Cooperative.

State of California
Department of Fish and Wildlife

Memorandum

Date: September 13, 2021

Received 9/24/2021
Signed original on file

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: Response to Petition 2021-001: San Miguel Island Abalone Fishery

At their June 17, 2021, meeting the California Fish and Game Commission (Commission) referred a petition for regulation change (2021-001) to the Department of Fish and Wildlife (Department) for its review and recommendation. This petition, submitted by Mr. Steve Rebuck, proposes to establish a commercial Red Abalone fishery at San Miguel Island. The Department has reviewed the petition and finds that the proposal does not provide sufficient information to warrant consideration of a red abalone fishery at San Miguel Island at this time and recommends the Commission reject the petition.

The Commission last reviewed a similar petition in 2012 and found that the red abalone stock at the island was insufficient to support a fishery. This finding was based on two reports that summarized several years of work to assess the viability of re-establishing a fishery at the island. Since that time, conditions for abalone at the island have deteriorated, including both an increase in purple sea urchins and a dramatic loss in kelp following the marine heatwave in 2014-2016. Prior to this, sea stars, specifically the sunflower star, a major sea urchin predator, succumbed to disease and is now locally extinct in both California and Baja California, Mexico. Unfortunately, these poor environmental conditions have led to declines in the abundance of red abalone as quantified by the 2019 Kelp Forest Monitoring Program (KFMP) surveys conducted by our partners at the Channel Islands National Park. The latest data from the KFMP show that all three sites at San Miguel Island, including the area known as the “Miracle Mile” known for high red abalone abundances, are all in poor condition and are characterized as new sea urchin barrens with high densities of purple and red sea urchins.

The Department is interested in working with partners to further assess the situation as San Miguel Island to determine if there any effective ways to improve conditions. Please direct questions to Dr. Craig Shuman, Marine Regional Manager, at (916) 215-9694 or by email at Craig.Shuman@Wildlife.ca.gov.

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Synopsis of Channel Islands National Park Kelp Forest Monitoring Sites at San Miguel Island – 2018, 2019

Channel Islands National Park (CINP) has conducted long-term ecological monitoring of the kelp forests around San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands since 1982. The following synopsis of Kelp Forest Monitoring (KFM) at San Miguel Island covers the years 2018 and 2019 for the three KFM sites established at the island, Wykoff Ledge (southside), Hare Rock (northside), and Miracle Mile (southside). The synopsis for each year includes an overall status summary of kelp forests at the island followed by detailed site notes for each site.

2018

The two sites on the south side of San Miguel Island were categorized as transitioning to urchin barren from kelp forest. Hare Rock, on the north remains dominated by *Strongylocentrotus spp. Strongylocentrotus purpuratus* density has increased dramatically since the release from predation after SSWD event caused *Pycnopodia helianthoides* to be extirpated from the Channel Islands in 2013-2014. There are fewer urchin predators at San Miguel Island when compared to the other islands, and *P. helianthoides* were the last predator capable of keeping *S. purpuratus* densities under control. With the explosion of dramatic increase in *S. purpuratus, M. pyrifera* has declined significantly.

This signifies a change for San Miguel Island, which has historically had lush kelp forest over the rocky reefs of the south side. A continuation of this trend could negatively impact the population of *Haliotis rufescens* and other species. The highest density of *H. rufescens* ever recorded was at Miracle Mile in 2018. The size frequency distribution of *H. rufescens* has shifted dramatically in the last two years, with a wider distribution towards smaller size classes which used to be outliers and are now part of the interquartile range. The shift in the size distribution and the increase in density indicate that many juvenile *H. rufescens* emerged from crevice habitat to forage for food. These smaller individuals are not usually sampled because they are too deep in crevices to see or to measure. Now that they have emerged, the density of abalone is higher and mean size is smaller. It is likely that the densities were always this high, but there is no way to capture smaller a representative sample with our non-invasive sampling techniques. These trends will be of the utmost importance to monitor in coming years.

Kelletia kelletii density have increased at Hare Rock since 2013. *Megastraea undosa* density increased following the 2015-2016 El Niño. *Patiria miniata* densities remain relatively low due to the warm water condition this region had experienced from 2014 2016. However, their densities have been greater at the cold-water islands of Santa Rosa and San Miguel than at the warmer water islands in the Park. *Pisaster giganteus* densities have remained low since the 2013-2014 SSWD event. *Crassadoma gigantea*

densities have steadily increased since 2013, with the highest densities ever recorded for San Miguel Island in 2018.

2018 SMI site notes:

Site #1, Wyckoff Ledge, San Miguel Island

2018 status: Transition state from kelp forest to urchin barren dominated

Percent Canopy Cover: 10%

Sampling Dates and Work Completed

09/24/2018: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count) including natural habitat size frequencies for *Macrocystis pyrifera, Tethya aurantia*, *Lophogorgia chilensis, Muricea californica, Me gathura crenulata, Kelletia kelletii*, *Crassedoma gigantea*, *Haliotis rufescens, Lithopoma gibberosa, Megastraea undosa*, *Lytechinus anamesus, Strongylocentrotus franciscanus*, *Strongylocentrotus purpuratus, Patiria miniata,* and *Pis aster giganteus*. The temperature loggers were retrieved and deployed.

Site Notes

This site had changed significantly since the previous year, much like what we had observed for the rest of San Miguel Island. There was a decrease in the amount of *Macrocystis pyrifera* and there were emerging sea urchin barrens. We observed less than 200 *M. pyrifera* individuals, which is fewer than in recent years. Though several urchin fronts were present at the site, there were still some small, intact patches of kelp forests with dense understories of red algae. We observed some areas that were devoid of *M. pyrifera* and *Pterygophora californica* but still had moderate cover of red algae, most of which were *Cryptopleura* sp. and *Callophyllis* sp. Both *Cryptopleura* sp. and *Callophyllis* sp. are less palatable to urchins, which may explain their continued presence. We believe all these changes are due to the die-off of *Pycnopodia helianthoides* in 2013/14 from the disease event that occurred throughout the Pacific Northeast. Our observations from four weeks ago and our conversations with local fishers have led us to understand that the decline in macroalgae and the increase in sea urchins, or rather the increase in urchins out of crevice habitat, is a developing and very recent event (perhaps as recent as August). Other than the decline in macroalgae and increase in urchins, the site appears to be similar to past years. *Ulva* sp. were scattered around the site and were mostly small-sized. We observed very little *Cystoseira* sp. *Desmarestia* sp. were scattered around the site. We observed less *Dictyoneuropsis* sp. than last year. The other brown algae recorded during RPCs were all *Dictyoneuropsis* sp*. Pterygophora californica* were less

abundant than last year. *Cryptopleura* spp. were the most abundant algae at the site. Other red algae were still moderately abundant, but less abundant than usual.

The most common miscellaneous invertebrate on RPCs were hydroids. *Epiactis* spp. were common. Small-sized *Urticina lofotensis* were moderately abundant. We observed the hydroids *Aglaophenia* sp. and *Obelia* sp. We observed some *Balanus nubilus*. We observed at least ten *Cancer* sp., which is more than last year. We observed bryozoans encrusting on red algae. Tunicates consisted of *Pycnoclavella stanleyi* and *Cystodytes lobatus*. *Pista elongata* were moderately abundant.

The *Aplysia californica* that we observed were mostly large-sized. We observed that highest abundance of *Bursa californica* than we have possibly observed anywhere. Many of the *B. californica* were small-sized, but all sizes were present. We observed two *Cryptochiton stelleri*.

Like what we have observed during survey dives and at Miracle Mile, the *Strongylocentrotus purpuratus* and *Strongylocentrotus franciscanus* are emerging from crevice habitat, forming urchin fronts, and completely grazing down all macroalgae. We observed at least ten *Dermasterias imbricata*, all of which were medium to large-sized. The *Lytechinus anamesus* were mostly large-sized.
The *Parastichopus parvimensis* were mostly huge in size, but individuals were rare. We did not observe any *Pycnopodia helianthoides* were observed. All the urchins appeared very healthy with good looking spines; there was no evidence of disease. Most of the urchins were out of the crevice habitat and actively foraging.

We observed fewer *Embiotoca lateralis* and *Chromis punctipinnis* than we typically see. Overall, there seemed to be fewer fish than usual for this site. We did not observe any *Sebastes miniatus* (vermillion rockfish).

There was one old cement bottom of a lobster trap on the site and two crab traps east of the site.

Site #2, Hare Rock, San Miguel Island

2018 status: Dominated by *Strongylocentrotus purpuratus* and, at a lower density, *Strongylocentrotus franciscanus*

Percent Canopy Cover: 0%

Sampling Dates and Work Completed

09/25/2018: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count) including natural habitat size frequencies

for *Macrocystis pyrifera, Tethya aurantia*, *Lophogorgia chilensis, Muricea californica, Me gathura crenulata, Kelletia kelletii*, *Tegula regina, Crassedoma gigantea*, *Haliotis rufesc ens, Lithopoma gibberosa, Megastraea undosa*, *Lytechinus anamesus, Strongylocentrotus franciscanus*, *Strongylocentrotus purpuratus, Patiria miniata, and Pisaster giganteus*. The temperature loggers were retrieved and deployed.
Five breaks of the lead line were repaired.

Site Notes

The site was devoid of all macroalgae. The most abundant algae were *Laurencia pacifica*, and there were a few *Codium fragile* individuals. Other red algae consisted mostly of filamentous red algae.

The most common miscellaneous invertebrates on RPCs were *Dodecaceria fewkesi*. *Tethya aurantia* were rare. *Corynactis californica* were abundant on the tops of rocks. We observed some very large-sized *Urticina lofotensis*. *Diopatra ornata* were rare. We did not observe any mysids. Terebellid worms were moderately abundant.

Crassedoma gigantea density and sizes increased compared to previous years. This increase in *C. gigantea* density could be a result of the dramatic decline of *Pisaster giganteus* and *Pycnopodia helianthoides* from the 2013/14 wasting disease event. There were substantial mussel beds forming as deep as 25 ft. at the 25-m point of the transect. These mussel beds were also scattered around the transect in low-lying cobble areas. *Cypraea spadicea* were observed out in the open. We observed only one live *Haliotis rufescens*, and it was small-sized. We collected 42 fresh *H. rufescens* shells, ranging from 15-96 mm. We observed a wide range of sizes of *Kelletia kelletii*. The *Megastraea undosa* were mostly all the same size. However, we observed one small-sized individual that was less than 15 mm. We only observed several *Megathura crenulata*. We only observed one *Tegula regina*.

The most notable change at the site was the increase in abundance of *Ophiothrix spiculata*, which were mostly large-sized. The site continued to be mostly dominated by small-sized *Strongylocentrotus purpuratus*, which had very high densities along most of the transect. Small-sized *Strongylocentrotus franciscanus* were moderately abundant, but smaller in size than has been observed over the past 35 years. We observed three large-sized *Centrostephanus coronatus.* We observed two *Leptasterias* sp. All the *Lytechinus anamesus* were large-sized.
Few *Parastichopus parvimensis* were observed, and most were very large in size. We observed four *Patiria miniata* with wasting disease. The *P. miniata* were all sizes and had the fourth highest densities observed this year out of all 33 KFM sites. However, the *P. miniata* densities were still lower than past years, prior to the recent warm water event. We only observed twelve *Pisaster giganteus*, some of which were very large-sized. We observed only one *Pycnopodia helianthoides*, and it measured at 25 mm, one

of only a few observed for the entire field season since the 2013/14 sea star wasting disease event.

We observed only four *Chromis punctipinnis*.

Site #21, Miracle Mile, San Miguel Island

2018 status: Rapidly developing sea urchin barren dominated by large *S. purpuratus* and *S. franciscanus*

Percent Canopy Cover: 5%

Sampling Dates and Work Completed

08/22/2018: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count) including natural habitat size frequencies for *Macrocystis pyrifera, Tethya aurantia, Megathura crenulata, Haliotis rufescens, Meg astraea undosa, Kelletia kelletii Crassedoma giganteus*, *Lithopoma gibberosa, Strongylocentrotus franciscanus*, *Strongylocentrotus purpuratus, Pisaster giganteus, Pycnopodia helianthoides* and *Patiria miniata*. The temperature loggers were retrieved and deployed. All the ARMs were sampled for all indicator species.

Site Notes

There was a dramatic decline in both *Macrocystis pyrifera* and understory algae compared to past years. We observed fewer *Pterygophora californica*, *Eisenia arborea*, and red algae. *Desmarestia* sp*.* were observed growing on *Haliotis* spp. shells. Encrusting coralline algae were more abundant than in past years. We observed a high abundance of *Norrisia norrisi* on *M. pyrifera* and *E. arborea,* which weighed down the blades, allowing abalone and urchins to feed on the plants. *Strongylocentrotus purpuratus* were observed eating the holdfasts of both dead and live *M. pyrifera* and *E. arborea.*

The most common miscellaneous invertebrates on RPCs were hydroids. *Balanus* sp*.* were observed covering *Haliotis* spp. shells. While no live individuals were observed, many *Cancer* sp*.* molts were present. There were high density patches of *Membranipora* spp*.* on all the kelp plants. A high diversity of tunicate species was observed on boulders. *Styela montereyensis* were observed and most individuals were large-sized. We observed an increased abundance of *Phragmatopoma californica* over much of the transect. *Membranipora* spp. were abundant on *M. pyrifera*. Small clouds of mysids were common along the benthos. We observed several 10 cm x 10 cm patches of *Mytilus californianus* on the tops of rocks,

which we do not recall ever observing before. The presence of *M. californianus* is likely due to the reduced sea star populations.

Haliotis rufescens were more abundant than we have ever observed at this site. As reflected in the band transect data, there were high densities of *H. rufescens* along the 0-35 m offshore side of the transect and the 0-10 m onshore side of the transect, particularly in the low-lying sand channel, offshore of the transect. *Haliotis rufescens* were mostly comprised of individuals larger than 140 mm. The *H. rufescens* that are typically not emergent (<100 mm) were out in the open. David Kushner thinks that these small *H. rufescens* may account for much of the increase in abalone densities. All the *H. rufescens* appeared hungry and we observed several that were shrunken and looked like they were starving. While we collected some *Haliotis* spp. shells, like past years, there were so many shells that collecting them all was not feasible. There were some, but not many, fresh shells. We expect that with current conditions of low food supply, there will be a high mortality event soon of *H. rufescens*. Three *Aplysia vaccaria* and two *Aplysia californica* were observed on the site. Most *Crassadoma gigantea* observed were small-sized. There were more *Cryptochiton stelleri* than we had ever observed here before. We observed five *C. stelleri* during band transects, and there were likely several others at the site. Some of the *C. stelleri* were small-sized, and potentially more visible due to the barren state of the site. While *Megastraea undosa* were assigned a "common" score on the species list, they were considerably abundant for San Miguel Island.

The site has changed dramatically with most of the sea urchins out of crevices and actively foraging. At least half of the site was an urchin barren. Most of the emergent urchins were larger-sized than other urchin-dominated areas. Along the 40-75 m offshore side of the transect is a large boulder field that used to hide most of the very difficult to access urchins. The deep crevices of this boulder field are now devoid of urchins, presumably because they were out in the open foraging for food. *Strongylocentrotus purpuratus* and *S. franciscanus* dominated along the transect. One 28 mm *Pycnopodia helianthoides* was observed, the first one observed all year.

We observed *Sebastes mystinus* feeding on small clouds of mysids.

There were relatively high numbers of abalone within the ARMs.

2019

All three San Miguel Island sites were categorized as dominated by echinoderms, primarily *Strongylocentrotus spp.* This marks the completion of a major shift from kelp forest, especially on the south side, to urchin barren. This trend has led to a massive decline in the population of *Haliotis rufescens* from Miracle Mile and Wyckoff Ledge. Most macroalgae at San Miguel which were historically abundant, are now absent or near absent. *Pycnopodia helianthoides* remain absent following the 2013-2014 SSWD.

Pisaster giganteus and *Patiria miniata* densities remain low. *Strongylocentrotus franciscanus* densities have remained stable, while *Strongylocentrotus purpuratus* densities have continued to increase. *Styela montereyensis* densities remain near zero following the recent decline. *Kelletia kelletii* densities have increased significantly at Hare Rock. *Crassadoma gigantea* densities remain high after the increase from recent years. *Balanophyllia elegans* densities increased at Miracle Mile. *Serpulorbis squamigerus* densities increased at Miracle Mile. Bryozoan and tunicate percent cover have decreased. San Miguel is still undergoing a major shift in its kelp forest community structure and these trends will be of the utmost importance to continue monitoring.

2019 SMI site notes:

Site # 1, Wyckoff Ledge, San Miguel Island

2019 Status: Dominated by echinoderms (*S. franciscanus* & *S. purpuratus*)

Percent Canopy Cover: 0%

Sampling Dates and Work Completed

09/24/2019: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count). Natural habitat size frequencies were completed for *Tethya aurantia, Megathura crenulata, Haliotis rufescens, Kelletia kelletii*, *Crassedo ma gigantea, Megastraea undosa*, *Lithopoma gibberosa, Lytechinus anamesus, Strong ylocentrotus franciscanus*, *Strongylocentrotus purpuratus, Patiria miniata,* and *Pisaster giganteus*. Temperature loggers were retrieved and deployed. A ten-minute acoustic recording was taken for the NPS Soundscape project. *Parastichopus parvimensis* size frequency data were collected on behalf of CDFW.

Site Notes:

This site was barren and almost entirely void of macroalgae. The only algae present were found on large boulders. High relief areas primarily hosted juvenile *Macrocystis pyrifera*, several small *Desmarestia* spp., some *Ulva* sp., and one *Dictyoneuropsis* sp. Red algae were present in aggregations, often near *Diopatra ornata* and articulated coralline. The red algae taxa included: *Rhodymenia* spp., *Callophyllis* spp., *Cryptopleura* spp., *Halymenia* sp., and filamentous red algae. Encrusting coralline algae was abundant, often under a light covering of sand.

The most common miscellaneous invertebrates observed on Random Point Contacts were anemones. *Tethya aurantia* were present in moderate numbers with the majority being medium to large-sized and covered by sand and silt. *Anthopleura* spp. were common and mostly large sized. *Astrangia lajollaensis*, *Balanophyllia elegans*,

and *Corynactis californica* were all found in moderate numbers on high relief areas and appeared healthy. One *Metridium* spp. was observed. *Urticina lofotensis* were abundant across size classes. *Diopatra ornata* were present in moderate numbers with most covered in red algae. *Phragmatopoma californica* were mostly small with scattered colonies. A few *Spirobranchus spinosus* were observed. *Balanus* spp. were large-sized and present in moderate numbers. One live *Cancer* sp. and one molt were observed. Few tunicates were observed, most were encrusting, however, some *Pycnoclavella* sp. and *Didemnum* sp. were present.

One *Aplysia californica* was observed. All size classes of *Crassadoma gigantea* were present and found in moderate numbers. Forty-one *Haliotis rufescens* were found and measured. *Kelletia kelletii* were common and mainly small sized. One *Megastraea undosa* was observed. Medium to large sized *Megathura crenulata* were present.

Strongylocentrotus franciscanus and *Strongylocentrotus purpuratus* were abundant and found outside of crevice habitat. All urchins appeared healthy with no signs of wasting disease or black spot. Many urchins had drift red algae attached to their spines. *Lytechinus anamesus* were rare and most were large-sized. *Ophiothrix spiculata* were found in low abundance. *Parastichopus parvimensis* were common and most were large-sized. Seventeen *Pisaster giganteus* were observed.

Coryphopterus nicholsii were common. A school of *Phanerodon furcatus* (white surfperch) were observed, as well as a few *Pleuronichthys coenosus* (c-o turbot) and *Citharichthys sordidus* (Pacific sanddab).

Site # 2, Hare Rock, San Miguel Island

2019 Status: Dominated by *S. purpuratus* and *Ophiothrix spiculata*

Percent Canopy Cover: 0%

Sampling Dates and Work Completed

10/8/2019: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count). Natural habitat size frequencies were completed for *Tethya aurantia, Megathura crenulata, Tegula regina, Kelletia kelletii*, *Crassadoma gigantea, Megastraea undosa*, *Lithopoma g ibberosa, Lytechinus anamesus, Strongylocentrotus franciscanus*, *Strongylocentrotus p urpuratus, Patiria miniata,* and *Pisaster giganteus*. Temperature loggers were retrieved and deployed. A ten-minute acoustic recording was taken for the NPS Soundscape

project. *Parastichopus parvimensis* size frequency data were collected on behalf of CDFW.

Site Notes:

The site was nearly devoid of macroalgae. One adult *Eisenia arborea* plant was present which was the only brown algae observed. The most abundant species of algae were *Laurencia* sp. A few large sized *Codium fragile* were present. Small amounts of filamentous red and green algae were present. Several *Gigartina* spp. were present, mostly on the onshore side of the transect line.

The most common miscellaneous invertebrates on Random Point Contacts were barnacles, followed by *Dodecaceria* sp. The *Tethya aurantia* looked unhealthy. All sizes of *Anthopleura* spp. were present and abundant in shallow areas. One *Metridium* sp. was present. There were no dense patches of *Diopatra ornata*. *Balanus* sp. were abundant in all size classes. Mysids were abundant. Amphipod tube mats were common. Two *Megathura crenulata* were observed. Most *Lytechinus anamesus* were near the 100 m end of the transect line, on the onshore side. *Parastichopus parvimensis* were mostly large sized. Two *Pisaster ochraceus* were observed. *Strongylocentrotus purpuratus* appeared smaller sized and more abundant than they have been in recent years, with very high-density patches present. Similarly, *Strongylocentrotus franciscanus* were small and abundant. *Strongylocentrotus* spp. dominated much of the site in very high-density patches. Similarly, *Ophiothrix spiculata* dominated some areas and appeared more abundant than in recent years.

Site # 21, Miracle Mile, San Miguel Island

2019 Status: Dominated by urchins (*S. franciscanus* & *S. purpuratus*)

Percent Canopy Cover: 0%

Sampling Dates and Work Completed

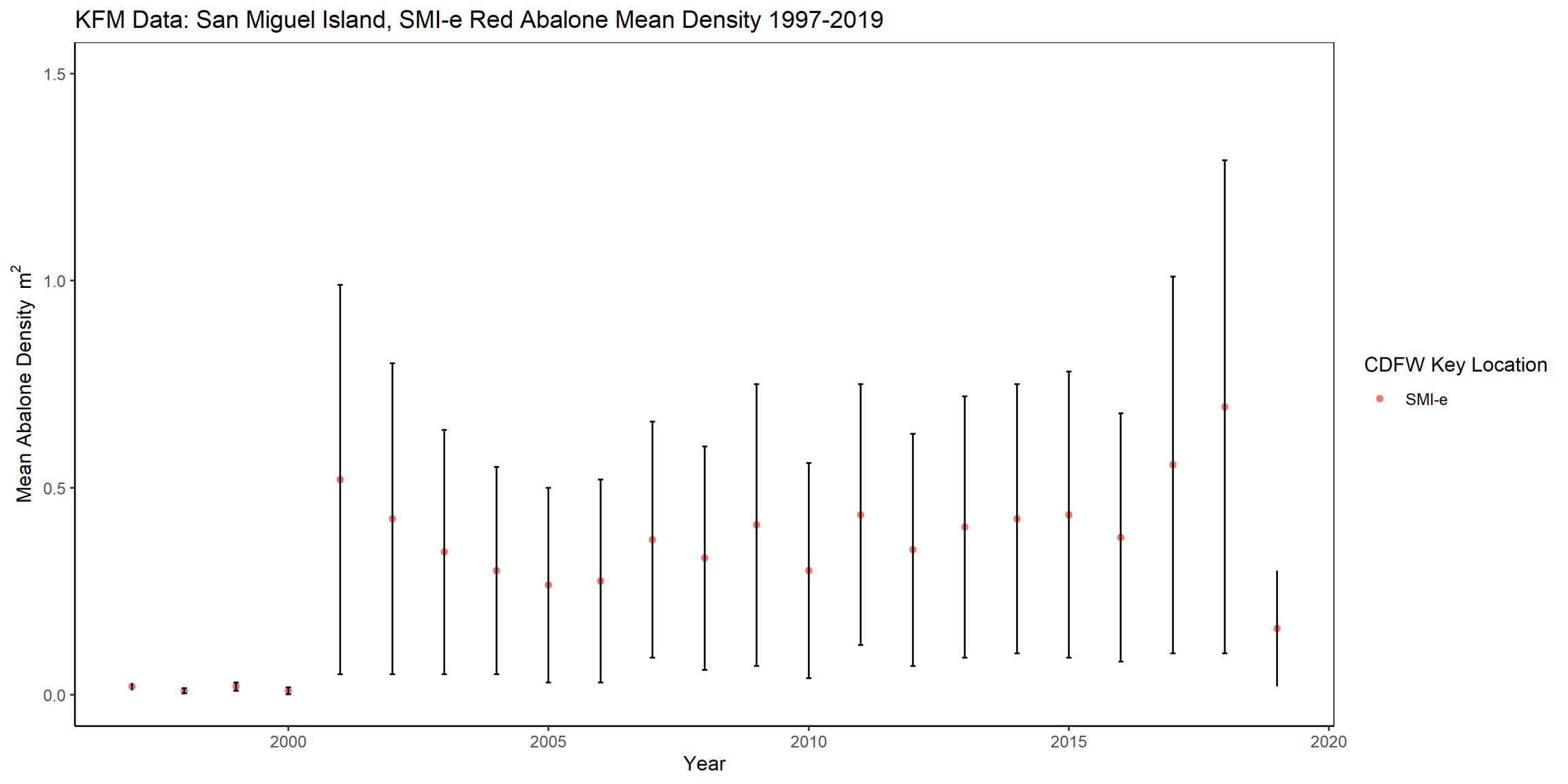
09/25/2019: All sampling protocols were completed (1 m^2 quadrats, 5 m^2 quadrats, band transects, random point contact, fish size frequency, video transect, visual fish transect, roving diver fish count). Natural habitat size frequencies were completed for *Tethya aurantia, Megathura crenulata, Haliotis rufescens, Kelletia kelletii*, *Crassadoma gigantea, Megastraea undosa*, *Lithopoma gibberosa, Lytechinus anamesus, Strongylocentrotus franciscanus*, *Strongylocentrotus purpuratus, Patiria miniata* and *Pisaster giganteus*. A ten-minute acoustic recording was taken for the NPS Soundscape project. Kelp blades and eDNA water samples were collected and sent to Carolyn Freedman at University of Washington for testing of Withering Syndrome Rickettsiales-like Organism

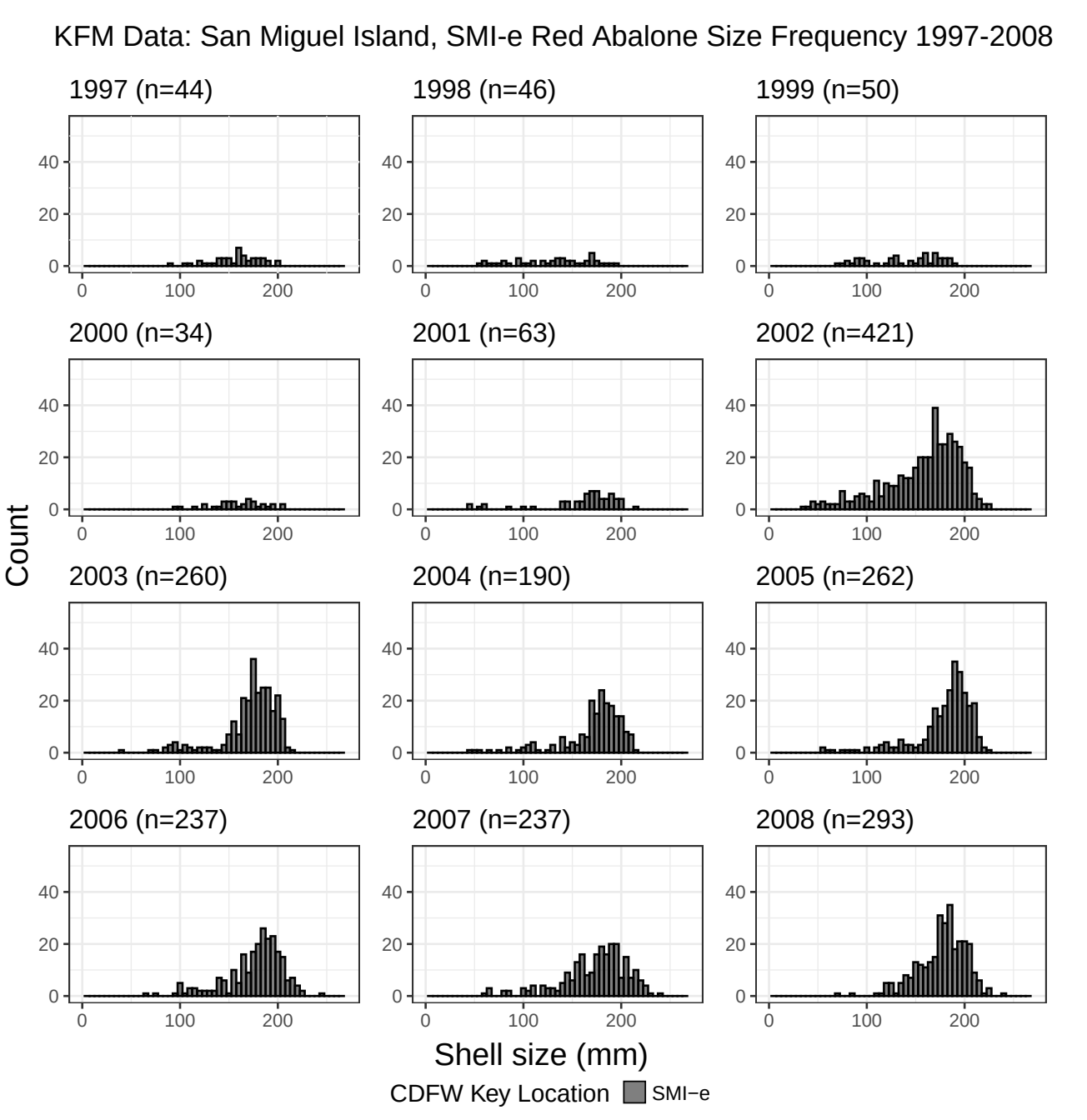
(WS-RLO). No *Parastichopus parvimensis* size frequency data were collected on behalf of CDFW.

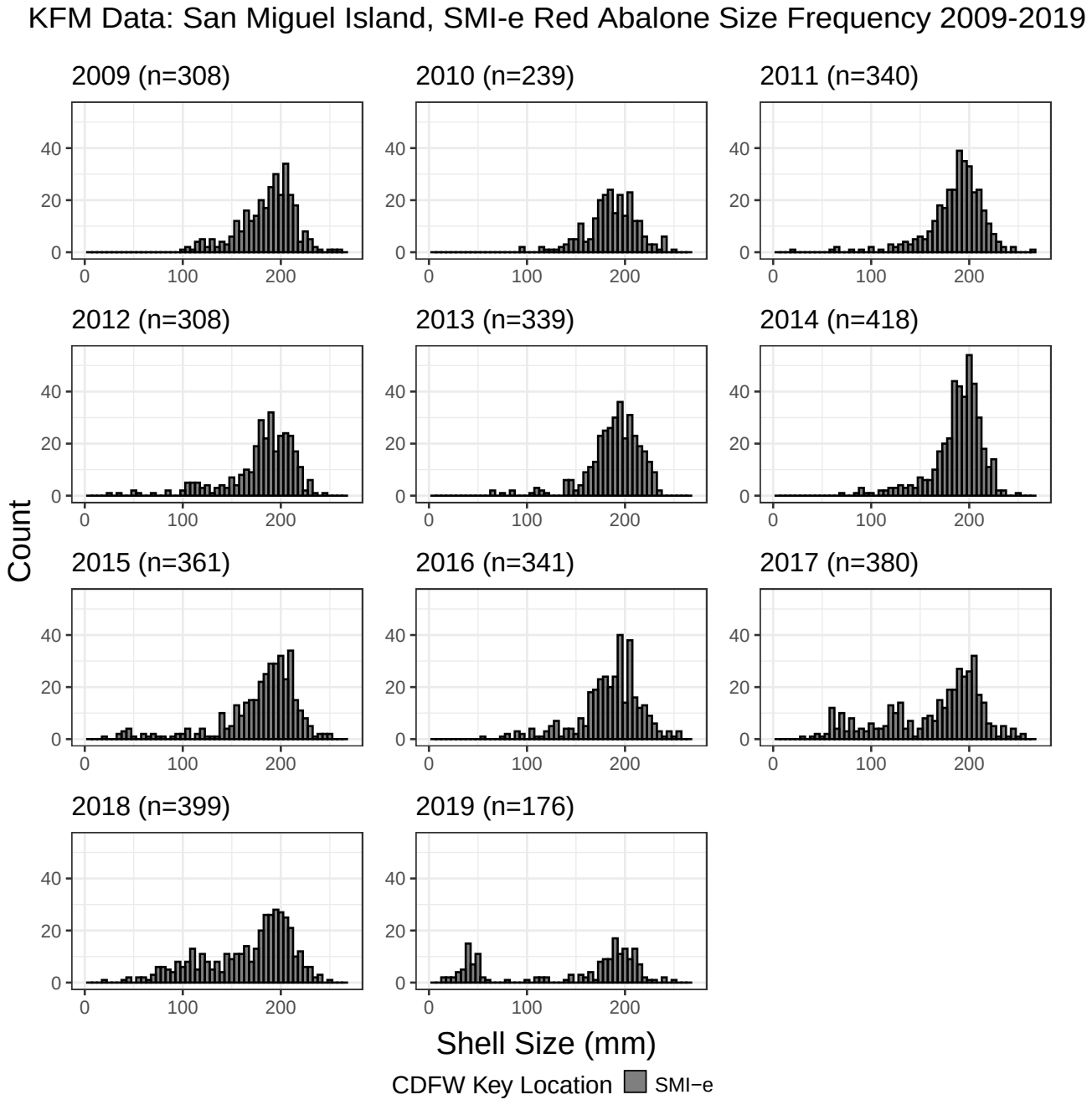
Site Notes:

This site was almost completely devoid of any macroalgae. Juvenile *Eisenia arborea* and *Macrocystis pyrifera* were rare. No *M. pyrifera* adults or subadults were observed. A few *Pterygophora californica* and *M. pyrifera* adults were seen 3 m inshore from the transect area. The *P. californica* observed off the site had tattered fronds. *Codium fragile* were present in moderate numbers. *Dictyota* and *Pachydictyon* were rare and were confined to small patches on high relief areas. High relief areas had similar trends to prior years, containing the only algae, mainly *Rhodymenia* spp*., Fauchea laciniata, Cryptopleura* spp*., Gigartina* spp*.,* filamentous red algae, and *Desmarestia* spp. Miscellaneous plants, mainly diatoms, were common.

The most common miscellaneous invertebrates on Random Point Contacts were anemones, mainly *Urticina columbiana* and *Epiactis* sp. After anemones, hydroids were the next most common miscellaneous invertebrates on RPCs, primarily *Hydractinia* sp. Tunicates, sponges, hydroids, *Cucumaria* spp. and anemones were common on the high relief boulders. *Haliclona* sp. were observed in moderate numbers. *Hymenamphiastra cyanocrypta* were observed primarily in the ARMs. We observed several patches of *Polymastia pacifica*. Additionally, *Spheciospongia* sp. were present, however appeared less abundant that in prior years. *Phragmatopoma californica* were observed in high density patches and covering large areas of the site, including high relief areas. *Mytilus* sp. were present in small patches in high relief areas. We observed two *Cancer* sp. in the ARMs and one on the site.


KFM Data: San Miguel Island, SMI-e Red Abalone Mean Density 1997-2019
Mean Abalone Density m2
1.5
1.0
0.5
0.0
2000
2005
2010
2015
2020
Year
CDFW Key Location
SMI-e


KFM Data: San Miguel Island, SMI-e Red Abalone Size Frequency 1997-2008
1997 (n=44)
1998 (n=46)
1999 (n=50)
2000 (n=34)
2001 (n=63)
2002 (n=421)
2003 (n=260)
2004 (n=190)
2005 (n=262)
2006 (n=237)
2007 (n=237)
2008 (n=293)
Count
Shell size (mm)
CDFW Key Location
SMI−e


KFM Data: San Miguel Island, SMI-e Red Abalone Size Frequency 2009-2019
2009 (n=308)
2010 (n=239)
2011 (n=340)
2012 (n=308)
2013 (n=339)
2014 (n=418)
2015 (n=361)
2016 (n=341)
2017 (n=380)
2018 (n=399)
2019 (n=176)
Count
Shell Size (mm)
CDFW Key Location
SMI−e

TO CALIFORNIA FISH + GAME COMMISSION,

ATTN- SUSAN ASHCROFT

DEAR SUSAN.

THANK YOU FOR TAKING THE TIME TO WORK WITH US. ON THE ABALONE REOPENER AT SAN MIGUEL ISLAND.

I'm DIVING FOR SEA URCHINS NOW. I SEE MOSTLY ABALONE AT SAN MIGUEL NOW, THEY HAVE RECOVERED IT LOOKS AS GOOD AS IT DID IN 1972. I'm IN SUPPORT of OPENING RED ABALONE AT SAN MIGUEL ISLAND. I'm LOOKING FORWARD WORKING WITH THE FISH + GAME AND MAKE THIS ABALONE FISHERY WORK!! THANK YOU

SINCERELY

Jeff Baldwin

CALIFORNIA FISH AND GAME COMMISSION

ATTENTION: SUSAN ASHCROFT / MARINE ADVISOR

ENCLOSED:

FOR THE RECORD

LETTER DATED.... JULY 12, 2021

RE: PETITION for Regulation Change (Tracking Number 2021-001)

*****E MAIL LETTER TO EXECUTIVE DIRECTOR and COMMISSIONERS

RE: SUPPORT FOR ARMP APPENDIX H

DATED JUNE 14, 2021

*****APPARENTLY RECEIVED TOO LATE TO BE CONSIDERED FOR THE JUNE 17, 2021 MEETING

**NOW BEING RE-SUBMITTED

RWMcK

[redacted]

July 12, 2021

California Fish and Game Commission

PO Box 944209

Sacramento, CA., 95814

ATTENTION: Susan Ashcroft / Marine Advisor

FOR THE RECORD

RE. Petition for Regulation Change (Tracking Number2021-001)

Requesting: To RE-OPEN Recreational and Commercial Red Abalone Harvesting at San Miguel Island.

As a former Commercial Abalone Permit Holder, Petition Signee and longtime Sea Urchin Permittee, I am very familiar with the Red Abalone footprint at San Miguel Island. We, the commercial Abalone Divers, have always been the conservators and conservationists of this most precious resource. We were willingly obligated to protect and monitor our livelihood. Those of us with Sea Urchin Diving permits, continue on with this mission; hoping that one day soon, we will have an opportunity to Harvest Red Abalone, once again.

Since the '96/'97 season closure, 24 years (TWENTY-FOUR), have passed; still NO Management Plan. In comparison, the Colosseum in Rome only took 10 years to construct.

The time for change has come. I whole heartedly Support the ARMP (Abalone Recovery And Management Plan) Appendix H. This Plan is a Win-Win for all involved, concerned parties.

This is a golden opportunity to establish a Real, Viable and Biological Fishery. The Commercial Divers would work in co-operation with the Department of Fish and Game. It would be a joint venture, whereby, the divers would collect and furnish the necessary Data, to the Department, in a Real Time Assessment.

RWMcK

The added Bonus is, this would be achieved, At NO Cost to the Department. The additional bonus would be, that we would finally be in tune with the rest of the world's fisheries, that have successful Management Plans in place.

Even with the proposed 3-month fishery, the co-lateral, positive Economic effects would be immediate. The Commercial Divers would have Income and the Department would have Permit and Tag fees. This would create an avalanche of economic gain, from processors hiring new employees and acquiring delivery personnel, all the way down to the consumer. Harbor businesses would benefit from the locals and tourists coming down to see the once dormant Abalone fleet, back in action.

The only downside would be...to continue Doing Nothing.

In order to achieve something, you Actually have to do something.

Sincerely

Robert W McKinley

Robert W McKinley

[redacted]

RWMcK

June 17th Meeting /Agenda # 25 A.1

[redacted]

Mon 6/14/2021 8:03 AM

For The Record

To: fgc@fgc.ca.gov <fgc@fgc.ca.gov>

Executive Director Miller-Henson
Commissioners : Silva, Murray, Hostler-Carmesin, Sklar and Zavaleta

I am a former Abalone Permit Holder giving my Support to the (ARMP), Abalone Recovery and Management Plan proposed in
Appendix H. I am also one of the 25 signed Petitioners submitted to you, requesting a Re-Evaluation of the closure of San Miguel Island to all abalone take.
A resource cannot be protected or advanced without a game plan. After 24 years, there is still no game plan.
Biologists, Politicians, Advisory Groups, Scientists et al, cannot agree on a game plan. Armchair analysis is not a Management Plan.
One can theorize, hypothesize, project and create computer models all you want, but without affirmative action, it becomes meaningless.
There is an old saying in the Fishing/Diving industry...You'll Never Know...Unless You Go.
Opening San Miguel Island to an Abalone Fishery will be a Win/Win for everyone.
The Divers are given an opportunity to pick Abalone again and the data collected would benefit in creating a Real Fisheries Management Plan, for generations to come.
Win, Lose or Draw, we would know and you, the Commissioners, would know, the sustainability of the fishery.
In 1999 another Abalone Permit Holder, Robert Hay, and I, took it upon ourselves to do our own scientific data collection.
During our lunch break from Sea Urchin Diving, we filmed one area at Crook Point (the exact same area), over a period of several years.
No one else has ever done this.
To view this Video:
Please go to..... YouTube Crook Point Abalone
It is a short 9-minute Video.

Thank You For Your Consideration
Robert McKinley

Robert W McKinley

[redacted]

RW McK